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HIGH COURT OF JUDICATURE AT BILASPUR: CHHATTISGARH

CORAM: **HON'BLE SHRI S.R. NAYAK, C.J. &**
HON'BLE SHRI D.R. DESHMUKH, J.

WRIT PETITION NO.2811 OF 1999

PETITIONERS:

1. State of Madhya Pradesh, through the Secretary, Government of M.P. Department of Archaeology, Mantralaya, BHOPAL.
2. Director, Department of Archaeology, and Museum, Government of M.P. BHOPAL.
3. Deputy Director, Office of Archaeology and Museums, Near Circuit House, RAIPUR.

Versus

RESPONDENTS:

1. Ram Nath Singh Rajput, aged 44 years Son of Late Bhagwan Das Rajput, at present posted as Accountant in the office of Dy. Director, Archaeological Department, Raipur, R/o Raja Talab RAIPUR.
2. M.P. State Administrative Tribunal, through its Registrar, at JABALPUR.

Present: Shri Prashant Mishra, learned Additional Advocate General for the State/petitioners.

None for the respondents.

(ORAL ORDER)
(Passed on 21st April, 2006)

The following order of the Court was passed by **S.R. Nayak, CJ.**

This writ petition filed under Article 227 of the Constitution of India is directed against the Order dated 17-02-1999 of the M.P. State Administrative Tribunal, Raipur Bench (for short "the Tribunal") passed in O.A. No. 487/98.

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2. When the Director, Department of Archaeology and Museum, Government of M.P., the second petitioner herein sought to recover a sum of Rs. 45,875.50 from the first respondent – employee on the ground that his pay-scale was wrongly fixed and excess amount was made, the first respondent filed O.A. No. 487/98 before the Tribunal calling in question the validity of the action of the second petitioner. The O.A. was contested by the petitioners herein by filing statement of objections. In the statement of objections, it was contended that the first respondent himself was looking after the accounts work in the department and he himself fixed his pay-scale according to the recommendations of various Pay Commissions. When the matter stood thus, the audit party which audited the accounts of the department found that the pay-scale of the first respondent had been wrongly fixed and excess payment was made to a tune of Rs. 52,866 /-and, therefore, the department was justified in taking steps to recover the excess payment made to the first respondent.

3. The Tribunal having appreciated the rival contentions of the parties and also the documents placed before it came to the conclusion, as could be seen from paras 15 and 16 of the order, that the excess payment was made to the first respondent by wrong fixation of his pay-scale. Nevertheless, the Tribunal allowed the O.A. on the ground that the fixation of pay-scale of the first respondent herein has had approval of the second petitioner herein. Hence, this writ petition by the aggrieved State – Authorities.

4. We have heard Shri Prashant Mishra, learned Additional Advocate General who appeared for the petitioners/State Authorities. When the case was taken up for final hearing, none appeared nor any representation was made on behalf of the first respondent though the first

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respondent was served with notice and represented by a counsel. This writ petition is of the year 1999. There is no justification to defer the hearing of the writ petition. In that view of the matter, we heard the writ petition finally.

5. Having heard learned Additional Advocate General for the State Authorities and having perused the materials placed before the Court and, particularly, the findings recorded by the Tribunal itself, we are of the considered opinion that the Tribunal has committed a serious error in allowing the O.A. filed by the first respondent. The Tribunal itself in more than one place in its order has recorded a specific finding that there was a wrong fixation of pay-scale of the first respondent and excess payment was made to him. If that is the established fact, simply because, such wrong fixation has had an approval of the second petitioner, that circumstance itself would never be a justification to allow the first respondent to make unlawful gain at the cost and peril of the State interest. The first respondent is duty-bound to repay the excess amount received by him on account of wrong fixation of pay-scale in pursuance of the recommendations made by the various Pay Commissions. The reason given by the Tribunal to allow the application is, in our considered opinion, perverse and irrational.

6. In the result and for the foregoing reasons, we allow the writ petition and set aside the impugned order of the Tribunal and dismiss O.A. No. 487/98 filed by the first respondent herein. In the facts and circumstances of the case, the parties shall bear their respective costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Subbu